

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking Regarding the Establishment of Complaint and)

Enforcement Procedures to Ensure That Telecommunications) D.T.E. 98-36

Carriers and Cable System Operators Have Non-Discriminatory)

Access to Utility Poles, Ducts, Conduits, and Rights-Of-Way.)

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Initial Comments of

Cambridge Electric Light Company and Commonwealth Electric Company

I. Introduction

Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth", together with Cambridge "COM/Electric" or the "Companies") submit these initial comments pursuant to the Notice and Order of the Department of Telecommunications and Energy ("Department") each dated December 9, 1998. Cambridge and Commonwealth each is an electric company within the meaning of G.L. c. 164, § 1. Cambridge provides retail electric distribution service within the City of Cambridge, and owns distribution facilities used in the provision of that service. Commonwealth provides retail electric distribution service in 40 communities located in southeastern Massachusetts, including Cape Cod and the Island of Martha's Vineyard, and owns distribution facilities used in the provision of that service.

With its December 9, 1998 Order, the Department attached proposed revisions to its regulations at 220 C.M.R §§ 45.00 *et seq.* These regulations set forth complaint and enforcement procedures to promote non-discriminatory access by telecommunications carriers and cable system operators to utility poles, ducts, conduits, and rights-of-way. Order at 2-3; *Proposed* 220 C.M.R. § 45.01. The Department stated that the proposed revisions to the current regulations are intended "to align our regulatory authority more closely with the requirements of Federal law and to carry out the terms of G.L. c. 166, § 25A."

II. General Comments

COM/Electric believes that the Department's proposed revisions to 220 C.M.R. §§ 45.00 *et seq.* are consistent with the provisions of 47 U.S.C. § 224, 47 C.F.R. §§ 1.401 through 1.1416, and G.L. c. 166, § 25A. In the next section of these comments COM/Electric identifies the following issues that the Companies believe the Department should address in the revised regulations: survey for attachments and the definition of usable duct space.

III. Specific Issues

A. Survey For Attachments

When a telecommunications carrier or cable system operator makes a request for access to COM/Electric's overhead or underground distribution system, the Companies may be required to perform a survey to determine available space or to identify specific structural requirements associated with the requested attachment. COM/Electric believes that the costs of any such survey should be charged to the carrier or operator requesting access to the utility's distribution system. The utility would inform the requestor of the cost before conducting the survey. The Companies offer the following sample language for the Department's *Proposed Regulations*:

If a telecommunications carrier or cable system operator requests access to a utility's poles, ducts, conduits, or rights-of-way and a survey is necessary to determine available space or structural requirements regarding such facilities, the utility shall provide the telecommunications carrier or cable system operator with a statement of the costs of such survey before it is performed. The cost of conducting the survey shall be paid to the utility by the telecommunications carrier or cable system operator.

B. Definition of Usable Space for Ducts

The Massachusetts statute and the Department's regulations governing access by telecommunications carriers and cable system operators to utility facilities contain the following definition of "Usable Space":

"Usable Space", means the total space which would be available for attachments, without regard to attachments previously made, (i) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation or electrical safety code or (ii) within any telegraph or telephone duct or conduit.

See G.L. c. 166, § 25A; 220 C.M.R. § 45.02. [\(1\)](#)

COM/Electric believes that the Department's definition should be more specific regarding electric duct. In particular, such definition should exclude from usable space the ducts that contain electric cable. This exclusion is necessary because communication cable placed in a confined space with electric cable would be damaged by the heat of the electric arc resulting when a cable fails. The definition also should exclude duct space that the utility has set aside for future distribution system requirements. This exclusion is necessary because the utility's obligation to connect requires a degree of system planning to meet expected future load requirements.

Iv. conclusion

COM/Electric supports the initiative of the Department in this rulemaking proceeding and further recommends adoption of the enhancements to the *Proposed Regulations* identified above by the Companies.

Dated: January 21, 1999

1. The regulations of the Federal Communications Commission governing this same matter contain the first portion of the definition of "usable space" (pertaining to poles) but do not contain the second portion of the above definition (pertaining to duct or conduit). See 47 C.F.R. § 1.1402(c).